

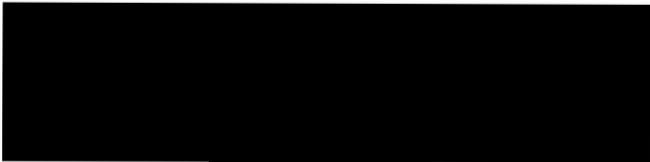
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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC 01 306 60610

Office: DALLAS

Date: JUN 28 2006

IN RE: Applicant: [REDACTED]

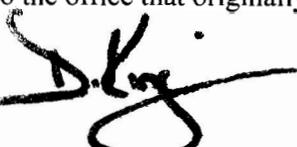
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Dallas, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had failed to establish that he satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, the applicant states that he was not aware of the requirements of the statute and regulations requiring a minimal understanding of English, history and government, and that the interviewing officer failed to inform him that his second interview was for the purpose of giving him a second chance to meet the legal requirements.

Under section 1104(c)(2)(E)(i) of the LIFE Act (“Basic Citizenship Skills”), an applicant for permanent resident status must demonstrate that he or she:

- (I) meets the requirements of section 312(a) of the Immigration and Nationality Act (8 U.S.C. 1423(a)) (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or
- (II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

Under section 1104(c)(2)(E)(ii) of the LIFE Act, the Attorney General may waive all or part of the above requirements for aliens who are at least 65 years of age or developmentally disabled.

The applicant, who was 52 years old at the time he took the basic citizenship skills test and provided no evidence to establish that he was developmentally disabled, does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act. Further, the applicant does not satisfy the “basic citizenship skills” requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because he does not meet the requirements of section 312(a) of the Immigration and Nationality Act (INA). An applicant can demonstrate that he or she meets the requirements of section 312(a) of the Act by “[s]peaking and understanding English during the course of the interview for permanent resident status” and answering questions based on the subject matter of approved citizenship training materials, or “[b]y passing a standardized section 312 test . . . by the Legalization Assistance Board with the Educational Testing Service (ETS) or the California State Department of Education with the Comprehensive Adult Student Assessment System (CASAS).” 8 C.F.R. § 245a.3(b)(4)(iii)(A)(1) and (2).

The regulation at 8 C.F.R. § 245a.17(b) provides that an applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the interview, shall be afforded a second opportunity after 6 months (or earlier at the request of the applicant) to pass the tests or submit evidence as described in paragraphs (a)(2) or (a)(3) of this section.

The record reflects that the applicant was interviewed twice in connection with his LIFE application, first on November 14, 2002 and again on March 8, 2004. On both occasions, the applicant failed to demonstrate a minimal understanding of English and minimal knowledge of United States history and government. Furthermore, the applicant has not provided evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1).

The applicant, however, could still meet the basic citizenship skills requirement under section 1104(c)(2)(E)(i)(II) of the LIFE Act, if he met one of the criteria defined in 8 C.F.R. §§ 245a.17(a)(2) and (3). In part, an applicant must establish that he meets the following under 8 C.F.R § 245a.17:

- (2) has a high school diploma or general educational development diploma (GED) from a school in the United States; or
- (3) has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance.

The record does not reflect that the applicant has a high school diploma or a GED from a United States school, or that he has attended a state recognized, accredited learning institution in the United States. Therefore, the record does not reflect that the applicant satisfies the regulatory requirement of 8 C.F.R. § 245a.17(2).

On appeal, the applicant states that had the interviewing officer explained to him the purpose of his second interview, he would have prepared himself by studying basic history and English. The applicant requests a third interview in which to prove he meets the minimal requirements of the statute and regulations.

The record contains a copy of a Form I-72 dated November 14, 2002 and addressed to the applicant at his home of record informing him that:

You have failed to demonstrate a minimal understanding of the English language. You will receive a notice for reexamination in six months where you must demonstrate that knowledge, plus understanding of the history and government of the United States. An alternative is to be pursuing a course of study to achieve that knowledge and understanding. The course must be recognized by the Attorney General of the United States.

Thus the applicant had notice that he had another opportunity to demonstrate his citizenship skills. Additionally, the requirements regarding basic citizenship skills is a matter of public law. Therefore, the applicant constructive notice of the requirements that he had to meet in order to satisfy the statutory requirements of the basic citizenship skills.

The applicant requests a third interview in which to prove that he meets the minimal legal requirements. However, the regulation provides for only one opportunity after the failure of the first test. 8 C.F.R. § 245a.17(b).

As discussed, the applicant failed to meet the “basic citizenship skills” requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act at either of his two interviews. Additionally, the applicant does not satisfy either alternative of the “basic citizenship skills” requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act and is therefore ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.